

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
CALVIN VASE VALRIE )

For Appellant: Victor Sherman  
Attorney at Law

For Respondent: Carl G. Knopke  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Calvin Vase Valrie against proposed assessments of additional personal income tax in the amounts of \$16,590.00 and \$8,005.76 for the years 1976 and 1978, respectively, and pursuant to section 18646 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the petition of Calvin Vase Valrie for redetermination of a jeopardy assessment of personal income tax in the amount of \$48,490.00 for the year 1977.

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After receiving information from a confidential informant that appellant Calvin Vase Valrie was selling heroin, the Los Angeles Police Department arrested appellant on February 27, 1978, at his residence. Therethe police found one-half a kilogram of heroin, \$56,376 in cash, and articles used in the narcotics trade, such as a triple beam balance scale, baggie sealers, sifters and Coca-Cola cans containing concealed glass bottles. On February 28, 1978, respondent received an affidavit from the police informant that appellant sold between five and ten kilograms of heroin a week, "pulled down" about \$100,000 a month, and gave big cocaine parties.

On April 16, 1978, appellant was arrested for conspiracy to sell narcotics. Police impounded \$35,470 found in appellant's car at the time of the arrest. At the police station following appellant's arrest, respondent's representative heard appellant tell a Los Angeles Sheriff's deputy:

1. That in 1977 'he made \$500,000 from giving "coke" parties;
2. That in 1977 he grossed \$250,000 from two gambling houses he owned;
3. That in 1977 he earned \$70,000 from a janitorial business he owned;
4. That in 1977 he put \$10,000 down on a new 450SL Mercedes-Benz;
5. That in 1976 he won \$160,000 at Caesar's Palace;
6. That he paid \$14,000 cash each for two 1972 Cadillacs and a new Mustang; and
7. That he owns a house in an expensive neighborhood.

With this information, respondent estimated that appellant had \$500,000 of taxable income for 1977, and that collection of the tax would be jeopardized in whole or in part by delay. On April 16, 1978, respondent issued a jeopardy tax assessment. At 9:30 p.m. on that date, respondent served an Order to Withhold on the Sheriff's office and collected \$35,470. Forty minutes later, appellant's attorney presented the Sheriff's

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office with appellant's signed assignment of the \$35,470 to the attorney's law firm..

After appellant petitioned for a reassessment, respondent asked him to furnish a financial statement and an explanation of the income which he derived from the sale of narcotics. On September 29, 1978, appellant submitted a financial statement in which he stated that in the years 1976, 1977 and 1978, he made \$25,000 per year gambling, \$30,000 from his janitorial services company, and that his wife made \$25,200 per year. The statement contained no information relating to the sale of narcotics. On January 11, 1979, appellant's attorney told respondent that appellant had not filed any tax returns in the past five years and that most of his income was from gambling.

On May 4, 1979, respondent issued Notices of Proposed Assessments against appellant in the amounts of \$16,590 for 1976 and \$8,005.76 for 1978. On May 9, 1979, appellant protested these assessments, and his representative told respondent that appellant's income for the past several years had been from the sale of drugs.

On June 16, 1979, a confidential informant told respondent that appellant owned two or three gambling houses, that appellant made \$700,000 in 1976, that the last half of 1977 and the first half of 1978 were very profitable for appellant as a result of his deals in heroin and cocaine, and that appellant sold his gambling houses in 1978.

After consideration, respondent affirmed its assessments for 1976 and 1978 on August 8, 1979, and on August 10, 1979, affirmed its jeopardy assessment for 1977, except for the addition of a standard deduction not formerly included in the computation of the amount due for that year.

The California Personal Income Tax Law requires a taxpayer to state specifically the items and amount of his gross income during the taxable year. Gross income includes gains derived from illegal activities, including the illegal sale of narcotics, which must be reported on the taxpayer's return. (United States v. Sullivan, 274 U.S. 259 [71 L.Ed. 1037] (1927); Farina v. McMahon, 2 Am.Fed.Tax.R.2d 5918 (1958).)

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In the absence of taxpayer-maintained records which will enable the taxpayer to file accurate returns, the Franchise Tax Board is authorized to compute income by whatever method will, in its opinion, clearly reflect the income. (Rev. & Tax. Code, § 17561, subd. (b); Breland v. United States, 323 F.2d 492 (5th Cir. 1963); Harold E. Harbin, 40 T.C. 373 (1963); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.)

The determination of a deficiency by the taxing authority is presumed correct, and the burden is on the taxpayer to prove that the correct income was an amount less than that on which the deficiency assessment was based. (Kenney v. Commissioner, 111 F.2d 374 (5th Cir. 1940); Appeal of John and Codelle Perez, supra.) No particular method of reconstructing income is required, since the circumstances will vary in individual cases. (Harold E. Harbin, supra.) The existence and amount of unreported income may be demonstrated by any practical method of proof that is available. (See, e.g., Davis v. United States, 226 F.2d 331 (6th Cir. 1955); Agnellino v. Commissioner, 302 F.2d 797 (3d Cir. 1962); Isaac T. Mitchell, ¶ 68,137 P-H Memo. T.C. (1968), affd., 416 F.2d 101 (7th Cir. 1969); Appeal of John and Codelle Perez, supra; Appeal of Walter L. Johnson, Cal. St. Bd. of Equal., Sept. 17, 1973.)

Appellant challenges the amounts of the assessments on the ground that respondent's estimates of appellant's income are not supported by documentation such as bank records or cancelled checks. But appellant has not demonstrated that the amount of the assessments are incorrect. Furthermore, respondent's assessment of tax for the year 1976 is based on an estimated taxable income of \$160,000, which is equivalent to appellant's statement of gambling winnings during that year without considering any other possible income producing activities which appellant may have pursued during that year. Respondent's assessment of tax for the year 1977 is based on an estimated \$450,000 in adjusted gross income, which is not unreasonable in the light of appellant's admitted gross income of \$750,000 from "coke" parties, and from gambling and janitorial enterprises. Respondent's assessment of tax for the year 1978, based on an estimated taxable income of \$82,376, is not unreasonable in the light of the expenditure-net worth method of estimating income as equivalent to the amount of cash, \$53,376, plus the estimated cost of a kilogram of heroin, \$20,000, seized from appellant at the time of his arrest on February 27, 1978, plus estimated cost of

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living of \$1,500 a month for four months. That estimate did not include the additional \$35,470 in cash or the estimated cost of the one-half kilogram of heroin seized from appellant at the time of his arrest on April 16, 1978. Nor are the estimates for 1977 and 1978 unreasonable in the light of the informant's statement that appellant had an income of \$100,000 per month during the last half of 1977 and the first half of 1978. Accordingly, we must sustain respondent's assessments.

Appellant's counsel also challenges the assessments on the ground that the funds respondent collected from the Los Angeles Sheriff's Department on April 16, 1978, were funds belonging to the appellant's law firm and not belonging to appellant. Appellant's law firm states that appellant owed it \$43,000 pursuant to a retainer agreement, and that \$15,000 of the \$35,470 was owned by the law firm but provided to appellant as a trustee. Therefore, appellant's counsel argues, respondent should return the funds to the law firm rather than apply those funds against the tax liability of appellant.

The claim of the law firm that respondent misappropriated its property does not appear to be part of the appeal of Calvin Vase Valrie, whose appeal is pursued under sections 18593 and 18646 and is concerned solely with the amounts of appellant's tax liability for the years in question. Accordingly, we decline to consider the firm's argument as part of the instant appeal.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board on the protest of Calvin Vase Valrie against proposed assessments of additional personal income tax in the amounts of \$16,590.00 and \$8,005.76 for the years 1976 and 1978, respectively, and pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the petition of Calvin Vase Valrie for redetermination of a jeopardy assessment of personal income tax in the amount of \$48,490.00 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day Of December, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins and Mr. Cory present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

Kenneth Cory, Member